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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Truth in Billing and	)	CC Docket No. 98-170
Billing Format	)	
	)	

To: The Commission

COMMENTS OF METROCALL, INC.

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July 26, 1999

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To: The Commission

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Metrocall, Inc. ("Metrocall"), by its attorneys, hereby submits its comments in response to the above-captioned *First Report and Order and Further Notice of Proposed Rulemaking* ("Order") which was released by the Federal Communications Commission (the "Commission") on May 11, 1999.[1] In support hereof, the following is respectfully shown:

I. Statement of Interest.

Metrocall is a publicly-traded company, and through its licensing subsidiary Metrocall USA, Inc., is one of the largest Commercial Mobile Radio Service ("CMRS") paging carriers in the United States. Metrocall currently provides paging and messaging services to approximately 5.5 million subscribers throughout the nation. Through its predecessor corporations, Metrocall has been an FCC-licensed paging carrier for more than 30 years, and continues to advance and improve its paging services through state-of-the-art technology, innovative service packages and competitive pricing plans.

As a long-time paging carrier with millions of customers, the FCC's proposed "Truth in Billing" and billing format regulations will have an immediate impact on Metrocall's operations

[1] The Order was published in the Federal Register on June 25, 1999. See 64 Fed. Reg. 34488.

and Metrocall's cost of providing service. Therefore, Metrocall is a party in interest with standing to file these comments.

II. Summary of Further NPRM

The FCC seeks further comment on whether the truth-in-billing rules it adopted in the wireline context should apply to CMRS carriers. More specifically, the agency seeks comment on whether such rules should be imposed on CMRS carriers in order to protect consumers. As it stated in its Order, the FCC believes that all consumers expect and should receive bills that are fair, clear, and truthful. However, absent evidence that there is a problem with wireless bills, it might not be necessary to apply the remaining rules in the CMRS context. The FCC also seeks comment on the applicability of a Section 10 forbearance analysis with regard to CMRS. The FCC also seeks comment on the extent to which the presence of a competitive market is relevant to consumers' ability to protect themselves from the harms addressed in the Order. The FCC also seeks comment on how to implement its billing "principles" in the CMRS context. For instance, it seeks comment on the current billing practices of CMRS providers, including the types and descriptions of charges CMRS providers include in their bills.

III. First Amendment Concerns

Metrocall has serious qualms about the First Amendment implications of any of the FCC's proposed billing content regulations. Although the Constitution accords a somewhat lesser degree of protection to commercial speech than to other constitutionally guaranteed expression, nevertheless, the First Amendment protects commercial speech from unwarranted governmental regulation. For commercial speech to come within the First Amendment, it at least must concern lawful activity and not be misleading. Next, it must be determined whether the asserted governmental interest to be served by the restriction on commercial speech is substantial. If both inquiries yield positive answers, it must then be decided whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest. Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557, 561-566 (1980).

In the case of the FCC's proposed regulations, the FCC has not claimed that the expression at issue, CMRS billing statements, is either inaccurate or relates to unlawful activity. Nor does the CMRS industry's status as regulated carriers mean that their billing and promotional statements are unprotected commercial speech. Id. at 566-568.

Furthermore, it is by no means clear that the FCC has yet established a "substantial governmental interest" in regulating competitive carrier billing statements; indeed, the FCC concedes that the record is nearly devoid of evidence that any problems exist in this regard. Order at ¶ 68.

Given the record evidence, the FCC's proposed regulations, which would impose administrative and cost burdens on all CMRS carriers, regardless of whether an individual carrier has had any history of consumer problems related to billing statements, is far more extensive than necessary to further the FCC's purported goals. The FCC cannot justify regulating thousands of competitive wireless carriers whose customers generally have no problems with their billing statements, based only on anecdotal evidence of a handful of customer complaints each year. In addition, no showing has been made that a more limited type of regulation, such as imposing specific billing requirements only on those CMRS carriers who routinely receive complaints about the form and content of their billing statements, would not serve adequately the FCC's interests.

Cf. Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557, 569-571. In sum, the FCC has not met the Constitutional threshold for regulating commercial speech in this area.

IV. Regulating CMRS Bills is Contrary to FCC Precedents

Regulating the billing practices of competitive carriers is no more effective or necessary than regulating their rates, terms and conditions of service. The FCC long ago eliminated federal tariff obligations for RCC/CMRS carriers, and successfully opposed any state efforts to continue such regulations following the 1993 amendments to Section 332 of the Act. Until now, the FCC has aggressively fought to keep states from imposing rate and entry regulations against CMRS carriers. See, e.g., Connecticut Dept. of Pub. Util. v. Federal Communications Comm'n, 78 F.3rd 842 (2d Cir. 1996).[2] The FCC has previously acknowledged that competitive marketplace forces are the most effective means of providing consumers with the widest array of service offerings, at competitive prices.

Mandatory uniform billing requirements are akin to rate and entry regulations; they are contrary to these FCC precedents and mandates, and are counter-productive. Proof of the connection between billing regulations and rate/entry regulations, and a harbinger of what the states will do if the FCC adopts these regulations, is attached hereto as Exhibit One. It is an

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[2] See also, Petition of the People of the State of California and the Public Utilities Commission of the State of California To Retain Regulatory Authority over Intrastate Cellular Service Rates, 11 F.C.C.R. 796 (1995); Petition on Behalf of the Louisiana Public Service Commission for Authority To Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana, 10 F.C.C.R. 7898 (1995); Petition of Arizona Corporation Commission, To Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services, 10 F.C.C.R. 7824 (1995); Petition of New York State Public Service Commission to Extend Rate Regulation, 10 F.C.C.R. 8187 (1995); Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services, 10 F.C.C.R. 7842 (1995).

Order from the Public Utilities Commission of Ohio, initiating its own truth in billing rulemaking proceeding. Although that proceeding does not, for now, cover CMRS carriers, given Ohio's previous stance regarding CMRS regulation, it is almost inevitable that Ohio will follow the FCC's lead if the FCC establishes regulations in this field.

Rather than encouraging creative alternative billing messages and mechanisms, mandatory FCC billing requirements will force carriers to conform to the mean. Also, by imposing another regulatory burden on CMRS carriers, which will disproportionally harm new and smaller carriers, the FCC's billing regulations are essentially a barrier to entry. Consumers will be harmed, since carriers will not be able to distinguish between competitive products based upon distinct billing services and formats, and, the costs of complying with these regulations will invariably be passed-through to customers.

V. The FCC's Regulations will be Difficult to Implement

The FCC's proposals assume that most CMRS customers receive paper bills; that is not the case. As is true throughout the CMRS industry, Metrocall's billing practices have advanced along with the services provided to CMRS customers. For instance, many of Metrocall's customers are "billed" electronically *via* computer-to-computer data transfers, or over the Internet, or by debit activities. Many customers effectively bill themselves, by accessing their accounts electronically. FCC mandated billing regulations cannot possibly keep up with or accommodate all of the many billing possibilities that the CMRS industry has created, or will create, for the customer's benefit.

By the same measure, due to the myriad means by which CMRS customers are billed for services, the costs of implementing the FCC's proposals could be staggering for competitive carriers. The agency's broad-brushed regulatory proposals suggest that it has scant evidence of the complexities of billing hundreds of millions of wireless customers. Paging carriers devote substantial personnel, computer resources, and dollars to the billing and collection process. There are limits to the amount of information that can be produced in a customer bill, without exponentially increasing manpower, printing, postage, computer and related expenses. Moreover, in light of the aforementioned different varieties of billing mechanisms, carriers will have to take a number of different steps to implement the FCC's rules throughout different billing formats/mechanisms. The paging industry in particular already operates at razor thin margins, or worse; additional governmental regulations will only increase the cost of doing business, with no improvement in service and no appreciable benefits to consumers.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Metrocall respectfully requests that the Commission not impose any further regulations on CMRS carriers, with respect to billing statements and formats.

Respectfully submitted,

METROCALL, INC.

By: ____________________
Frederick M. Joyce
Christine McLaughlin

Its attorneys

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July 26, 1999

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Ordered Investigation Into Truth-in-Billing for Telecommunication Services.	)))	Case No. 99-833-TP-COI

ENTRY

The Commission finds:

(1) On February 8, 1996, Congress enacted the Telecommunications Act of 1996 [1](the Act). One of the primary purposes of the Act is to create a competitive telecommunications environment that will foster new services and technologies. By promoting the development of competition, the Act has indeed fostered many new and innovative telecommunication services. However, effective competition can only exist in an environment where consumers have access to accurate, meaningful information presented in a format that lends itself to comprehension and comparison. Without such an environment, consumers will not be able to distinguish between various choices and they will not benefit from competitive forces. Unfortunately, with the advent of new and innovative services, there has been a concomitant increase in the complexity of consumer billing.

The Federal Communications Commission (FCC) has recognized that the increasing complexity in consumer billing poses a threat to effective competition. On May 11, 1999, the FCC issued a First Report and Order and Further Notice of Proposed Rulemaking (Order) (CC Docket No. 98-170, *In the Matter of Truth-in-Billing and Billing Format*) setting forth guidelines to make it easier for consumers to read and understand their telephone bills. The intent of the Order is to protect consumers from misleading and inaccurate billing practices. However, rather than issuing detailed and rigid rules, the FCC opted to issue broad, general principles aimed toward the promotion of truth-in-billing. To ensure that consumers receive thorough, accurate, and understandable bills, the FCC required that telephone bills clearly identify the service provider, that telephone bills highlight any new providers, and that telephone bills be clearly organized.

1 47 USC 151 et seq.

Charges must be accompanied by descriptions that are complete and not misleading. Furthermore, bills must clearly and conspicuously disclose any information the consumer may need to make inquiries or contest charges.

The FCC specifically noted that states are free to enact and enforce additional regulations so long as they are consistent with the guidelines set forth in the Order. It is pursuant to that provision that the Commission will consider the promulgation of its own rules and guidelines to promote clarity and comprehension in telecommunication billing.

(2) The Commission has noted a dramatic increase in contacts from consumers who are confused by the charges that appear on their telephone bills. For most consumers, the monthly telephone bill is their primary source of information and point of contact with respect to their telecommunication service providers. The Commission agrees with the FCC that, for effective competition, it is imperative that consumers receive necessary billing information in a format that allows consumers to make informed choices. The Commission has long recognized the significance and value of the information contained in customer bills. Rule 4901:1-5-16, Ohio Administrative Code, deals specifically, and in great detail, with the format and minimum content of both local exchange carrier (LEC) and interexchange carrier (IXC) bills.

(3) Toward the goal of furthering the guidelines and principles established by the FCC, as well as responding to the concerns of Ohio consumers, the Commission is interested in reviewing, at a minimum initially, the line items that reflect surcharges, taxes, and miscellaneous or "other" charges. These charges generate a substantial number of inquiries and are the basis for an inordinate amount of the confusion associated with telephone bills. The Commission shall, therefore, review the charges associated with both local and toll service. It is, therefore, necessary for all certified LECs and IXCs to provide the Commission with information concerning charges appearing in both the "local" and "toll" portion of the bill, whether such bills are rendered by the LEC, the IXC, or a third-party billing agent. To facilitate the Commission's review of these charges, IXCs and LECs shall file answers to the questions set forth in the attached appendix on or before August 17, 1999.

It is, therefore,

ORDERED, That in accordance with Finding (3), local exchange carriers and interexchange carriers operating in Ohio shall provide responses to the questions presented in the attached appendix. It is, further,

ORDERED, That copies of this entry be served upon all local exchange carriers and interexchange carriers operating in Ohio, the Ohio Consumers' Counsel, the Legal Aid Society of Dayton, the Empowerment Center of Greater Cleveland, the Ohio State Legal Services Association, and the Ohio Telecommunication Industry Association.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan Schriber, Chairman

Craig A. Glazer

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

LDJ/vrh

Entered in the Journal
JUL 15 1999
A True Copy

Gary E. Vigorito
Secretary

APPENDIX

Pursuant to the Commission's entry issued on July 14, 1999, in Case No. 99-833-TP-COI, each interexchange and local carrier providing service in Ohio should file the following information with the Docketing Division of the Public Utilities Commission on or before August 17, 1999:

(1) A comprehensive list of each line item, exclusive of call detail, to include fees, taxes or surcharges listed on any customer bill. List the name of each charge as it appears on the local exchange carrier bill, or, as appropriate, on a bill rendered by an interexchange billing agent.

(2) A thorough explanation of each charge listed in response to the above inquiry. Such explanation must include:

(a) The specific authority for assessing the charge.

(b) The manner in which each charge is calculated and assessed.

(c) The date(s) on which the charge first appeared on the bill.

(d) A description of the charge, including any components of which it is comprised.

(3) Copies of your companies current residential and non-residential bills, which incorporate the charges listed above.

CERTIFICATE OF SERVICE

I, Taisha Howard, a legal administrator with the law firm of Joyce & Jacobs, Attorneys at Law, L.L.P., hereby certify that on the 26th day of July 1999, a paper copy and a diskette copy of the foregoing Comments of Metrocall, Inc. were served by hand-delivery upon the following:

David Konuch, Esq.
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
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Taisha Howard

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